

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214881

DATE: May 15, 1984

MATTER OF: Carol B. McKenna

DIGEST:

Employee who transferred to a position having the same title, grade, and promotion potential is not entitled to moving expenses since the employing agency properly determined that she transferred for her own benefit and not primarily in the interest of the Government.

This action is in response to a request for an advance decision concerning the relocation expense claim of Mrs. Carol B. McKenna, an employee of the Forest Service, United States Department of Agriculture, Asheville, North Carolina.¹ We find that Mrs. McKenna's claim may not be paid, since the relocation expenses were incurred in connection with a transfer which was properly determined to be primarily for her benefit.

Prior to being transferred to the Southeastern Forest Experiment Station at Asheville, Mrs. McKenna was employed as a voucher examiner, grade GS-540-4, with the Forest Service at Ozark-St. Francis National Forest, Russellville, Arkansas. In October 1983 Mrs. McKenna learned of a position as voucher examiner, GS-540-3/4, at the Asheville station, for which a vacancy announcement under the Merit Promotion Program had been issued on August 31, 1983. (The closing date of that announcement was September 21, 1983, but the position remained open through October 1983.) Mrs. McKenna was interested in being reassigned to the Asheville station, in part, because her husband had recently accepted employment in Asheville, and she planned to accompany him there. She applied for and was offered the voucher examiner position at grade GS-4.

Mrs. McKenna accepted the lateral reassignment, although she was informed prior to November 13, 1983, the effective date of reassignment, that relocation expenses were not authorized in connection with her transfer because

¹ This request for advance decision was submitted by Mr. C. E. Tipton, Certifying Officer, Forest Service, Department of Agriculture, Washington, D.C.

she was considered and selected for the position under the Forest Service Voluntary Application Program. By letter dated January 16, 1984, the Head of the Personnel Management Section advised her that the earlier explanation as to why her relocation expenses were not paid was inadequate, and that her expenses were not paid because she was reassigned primarily for her own benefit, and not primarily for the benefit of the Government.

On the basis of these statements in the January 16 letter, Mrs. McKenna contends that the agency erroneously denied payment of her relocation expenses. She says that the agency's decision that her reassignment was primarily for her benefit was based on the fact that her husband had accepted employment in Asheville. It is her contention that the fact that her "needs were served by this transfer cannot be used as a premise leading to the conclusion that the Government's interest was not served by the transfer."

As support for her contentions Mrs. McKenna cites Comptroller General decision 54 Comp. Gen. 892 (1975). That decision held that the fact that a Federal civilian employee was transferred at approximately the same time to the same place as her spouse, who was a military member, did not preclude a determination by the employing agency that the civilian employee was entitled to relocation expenses because her transfer was in the Government's interest. In that decision it is stated:

"* * * The fact that her transfer also served her personal needs in view of her husband's transfer (which could well have been the reason she chose to apply for the job * * *) would not preclude a determination that the transfer was in the Government's interest. This determination, however, must be made by the agency concerned. * * *"

Mrs. McKenna expresses the view that, regardless of any personal benefit, her reassignment was in the interest of the Government since, as an experienced voucher examiner, she assumed the vacant position which the agency had for several months been unable to fill due to a lack of qualified applicants.

Reimbursement of an employee's travel and relocation expenses upon a change of station, authorized by 5 U.S.C. §§ 5724 and 5724a, is conditioned upon a determination by the head of the agency concerned or by a designated agency official that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee, or at his or her request. Federal Travel Regulations (FPMR 101-7, 1981), paragraph 2-1.3.

An employee's transfer may be determined to be in the interest of the Government even though the transfer also serves his personal needs. Nevertheless, the fact that the employee was transferred to fill a vacant position for which he has been competitively selected is not the sole basis for a determination that his transfer was primarily in the Government's interest. In cases, such as this, where an employee's transfer did not involve a promotion but a lateral transfer to a position having no greater promotion potential than his previous position, we have sustained the agency's determination that the transfer was for the employee's convenience and not in the interest of the Government. Matter of Platt, 61 Comp. Gen. 156 (1981), and Matter of Tom, B-206011, May 3, 1982. In recognition of the employing agency's authority to make this determination, we will not overturn the agency's determination unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. Matter of Jackson, B-210739, June 7, 1983.

As did the employees in Matter of Tom, and Matter of Jackson, both cited above, Mrs. McKenna applied and was selected for a position that had been advertised in a vacancy announcement issued under the Merit Promotion Program. However, not only had the vacancy announcement expired when Mrs. McKenna applied for the position, but upon acceptance, she was reassigned to the same position at the same grade as the position from which she was transferred, with no further promotion potential. Consistent with previous decisions of this Office, we find that the agency's determination that Mrs. McKenna's transfer was primarily for her benefit and not primarily for the benefit of the Government was not arbitrary, capricious or erroneous, and it, therefore, is sustained.

William J. Arnold

Acting Comptroller General
of the United States